

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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US BANK, NATIONAL ASSOCIATION,

Plaintiff,

-against-

COMMONWEALTH LAND TITLE INSURANCE
COMPANY,

Defendant.

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COMMONWEALTH LAND TITLE INSURANCE
COMPANY,

Third-Party Plaintiff,

-against-

ANM FUNDING LLC, ABE KLEIN, NOAH
HERSHKOVITZ, LEAH HERSHKOVITZ, TSVINY
HERSHKOVITZ, LOWENTHAL & KOFMAN, P.C.,
MARTIN KOFMAN, NORMAN TEPFER, SAMUEL
GLUCKMAN and ROLAND FIELDS

Third-Party Defendants.

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**COMMONWEALTH'S
RULE 56.1(b) STATEMENT
OF MATERIAL FACTS AS
TO WHICH THERE IS NO
GENUINE ISSUE TO BE
TRIED**

Index No. 13-civ-7626 (NRB)

Pursuant to Rule 56.1 of the Local Civil Rules of the Southern District of New York, third-party plaintiff Commonwealth Land Title Insurance Company ("Commonwealth") submits this Statement of Material Facts in opposition to third-party defendant Abe Klein's motion for summary judgment dismissing the claims as against Abe Klein. Citations to exhibits evidencing the material facts asserted herein refer to the exhibits annexed to the Affirmation of David K. Fiveson dated October 30, 2014 which is submitted in opposition to Abe Klein's motion to dismiss as well as the pleadings herein.

The Parties And Other Persons Involved In The Action

1. On or about October 28, 2013, US Bank, National Association (“US Bank”) commenced the within action seeking damages against Commonwealth under the policy (“US Bank Complaint”). (Docket No. 1).

2. On or about December 12, 2013, Commonwealth answered the US Bank Complaint. (Docket No. 10).

3. On or about August 11, 2014, Commonwealth commenced the third-party action. (Docket No. 27).

4. On or about September 8, 2014, third-party defendant Abe Klein was served with the summons and third-party complaint by substituted service. (Affirmation ¶ __).

5. On or about October 14, 2014, third-party defendant Abe Klein filed an Answer with only two denials to the allegations to the complaint, without asserting any affirmative defenses (“Answer”). (Docket No. 69).

6. Since Mr. Klein only denied “(1) Rung Serv; and (2) I was not a principal of ANM Funding LLC,” (Answer ¶ 1-2) Mr. Klein has therefore admitted the following allegations of the Complaint:

a. Commonwealth is a corporation existing under the laws of the State of Nebraska and conducts business in the State of New York. (Complaint ¶ 1).

b. Commonwealth is a title insurance company authorized under New York law to issue title insurance policies in New York and acceptance premiums for the issuance of such policies. (Complaint ¶ 2).

c. ANM Funding, LLC (“ANM”) is a New York limited liability company that was managed by the principal Abe Klein, who is a resident of New York.

(Complaint ¶ 3, 4; Ex. A).

d. Noah HersHKovitz, Leah HersHKovitz, and Tsviny HersHKovitz are residents of New York and at all times material hereto were employees/agents of ANM.

(Complaint ¶ 5-7).

e. Lowenthal & Kofman, P.C. is a New York professional corporation and acted as US Bank's counsel and settlement agent at the closing of the Loan on November 29, 2007. (Complaint ¶ 8, 19).

f. Martin Kofman is a resident of New York and at all times was an employee of Lowenthal & Kofman, P.C. (Complaint ¶ 9).

g. Norman Tepfer is a resident of New York and at all times material hereto was a notary public and an employee/agent of Lowenthal & Kofman, P.C. (Complaint ¶ 10, 19).

h. Samuel Gluckman is a resident of New York. (Complaint ¶ 11).

i. Roland Fields is a resident of New York. (Complaint ¶ 12).

j. Laura Fields died October 18, 2007. (Complaint ¶ 16).

k. A. Kanzada Jordan is believed to have laundered the proceeds of the Loan. (Complaint ¶ 21).

The Loan

l. In or about November 2007, ANM acted as US Bank's mortgage broker for a \$367,250 loan to Laura Fields, which closed on November 29, 2007 ("Loan"). (Complaint ¶ 13).

m. Repayment of the Loan was secured by a first mortgage granted by Ms. Fields against the premises 1430 Pinson Street, Far Rockaway, New York

(“Premises”). (Complaint ¶ 13).

n. To induce US Bank to make the Loan, ANM, Abe Klein, and the collective HersHKovitz third-party defendants submitted to US Bank a false credit report of Laura Fields, false certifications that Ms. Fields had been employed in November 2007 for several years and a false appraisal report of the Premises. (Complaint ¶ 14).

o. Samuel Gluckman provided a fraudulent appraisal of the Premises to ANM. (Complaint ¶ 15).

p. Roland Fields provided to ANM the pedigree information of Laura Fields following her death as well as a false social security number on Ms. Field’s death certificate to conceal the death from any public record. (Complaint ¶ 17).

q. Lowenthal & Kofman, P.C., Martin Kofman and Norman Tepfer had actual knowledge that US Bank would not fund the Loan unless a HUD-1 was submitted to US Bank setting forth all payees of the Loan proceeds and the paying off of a prior lien to Veronica McCreath. (Complaint ¶ 20)

r. Lowenthal & Kofman, P.C., Martin Kofman and Norman Tepfer had actual knowledge that US Bank would not fund the Loan unless a loan policy was issued by a title underwriter insuring the mortgage securing re-payment of the Loan as a first lien against the Premises. (Complaint ¶ 20).

s. Lowenthal & Kofman, P.C., Martin Kofman and Norman Tepfer had actual knowledge that the loan policy would not issue unless the signature of Laura Fields on the insured mortgage was acknowledged by a notary as being genuine. (Complaint ¶ 20).

t. To induce US Bank to fund the Loan and cause Commonwealth to

issue a loan policy, Lowenthal & Kofman, P.C. and Martin Kofman submitted a false HUD-1 on November 29, 2007 to US Bank not disclosing the payment of \$305,686.29 of the Loan proceeds to A. Kanzada Jordan. (Complaint ¶ 21).

u. Moreover, Norman Tepfer fraudulently acknowledged the signature of the imposter on the mortgage as that of Laura Fields on November 29, 2007, who had died one month prior to the closing. (Complaint ¶ 21).

The Title Policy

v. At the closing on November 29, 2007, Commonwealth issued a loan policy for the Premises insuring the mortgage as a first lien ("Policy"). (Complaint ¶ 22).

w. The granting of the Policy was predicated on Norman Tepfer's notarial acknowledge of the signature of Laura Fields. (Complaint ¶ 22).

Commonwealth's Alleged Liability

x. Commonwealth's liability to US Bank under the Policy is wholly due to third-party defendants' breach of contract, negligence, fraud, unjust enrichment, conspiracy to commit fraud and/or the aiding and abetting of fraud. (Complaint ¶ 24).

y. If Commonwealth is found liable under the Policy, third-party defendants shall be wholly liable to Commonwealth for all damages sustained, attorneys' fees, costs and disbursements, and/or liable to Commonwealth for contribution based on the parties' respective fault, as determined by the trier of fact. (Complaint ¶ 25).

Dated: New York, New York
October 30, 2014

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